IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO.2001 OF 1998

with

CIVIL APPLICATION NO.3588 OF 1998

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1. Whether reporters of local papers may be allowed to see the order ?

2. To be referred to the reporters or not ?

3. Whether their lordships wish to see the fair copy of the order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?

5. Whether it is to be circulated to the Civil Judge?

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VAISHALI SILK MUSEUM
VERSUS
AHMEDABAD MUNICIPAL CORPORATION

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Appearance:
MR MB GANDHI for the Appellant-applicant

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Coram: S.K. Keshote,J
Date of decision: 30/09/1998

C.A.V. ORDER

#. Challenge has been made in this First Appeal to the order dated 19th March 1998 passed below Ex.5 in

Municipal Valuation Appeal No.3992 of 1997 by Ahmedabad Small Causes Court at Ahmedabad.

#. Under the impugned order, the learned Small Causes Court granted the application below ex.5 filed by the appellant for interim relief and interim relief as prayed for by the appellant has been granted and made absolute till final disposal and hearing of the Appeal on condition that appellant deposits Rs.35,000/= with the respondent-Corporation on or before 31.3.98, failing which the respondent-Corporation has been granted liberty to initiate recovery proceedings.

#. The facts of the case, in brief, are that in the appeal, the appellant has challenged the bill No.1123 dated 9.9.97 for payment of tax for the year the years 1996-97 and 1997-98. Under the said bill, the Gross Rateable Value of the premises occupied by the appellant was fixed by the Corporation at Rs.35,615/= and on the basis of the said Gross Rateable Value, the Corporation has demanded Rs.55,944/= including interest from the appellant. Alongwith the Appeal, the applicant filed an application ex.5 for grant of interim relief which came to be disposed under the impugned order. Hence this Appeal.

#. The learned counsel for the appellant contended that the learned Court below has committed an error in granting conditional interim stay order in favour of the appellant. It is a case where arbitrarily the Gross Rateable Value has been fixed at Rs.35,615/=, and as a result thereof, a heavy liability to pay tax has been imposed on the appellant and the Court below should have granted unconditional interim relief in favour of the appellant. It is lastly contended that in case interim relief is to be granted subject to the condition of payment of heavy amount, it will cause prejudice to the appellant and the same will amount to betray the right of appeal to the appellant.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. The learned lower Court has observed in the impugned order that the appellant has not preferred the Appeal against the decision of the Appellate Officer. This Appeal is filed against the demand bill and sought for rejection of the said bill. The learned lower Court though opined that there is a serious question involved in the Appeal, the Court below is right to observe that the same cannot be determined at this stage of

consideration of the application below ex.5. Such contentious contentions and the questions can only be decided after taking the evidence of the parties. This approach of the learned lower Court is not erroneous or perverse. At the stage where the Court has to consider the application made by the appellant for grant of interim relief, it need not to adjudicate on the merits of the matter finally. It is a stage where the Court, after considering the material on the record has to decide the application filed for interim relief. Whatever orders are passed on such application are interlocutory orders, meaning thereby, by those orders, the proceedings are not finally disposed of. At this stage, the Court has to consider whether it is a case where the interim relief as provided under Section 406 of the Act has to be granted against the Corporation restraining it from realizing the full demanded amount of tax or subject to condition of depositing the some part of the amount of demand and the recovery of the rest of the amount should be stayed. At this stage, as rightly observed by the lower Court, niceties of the issues raised or the merits of the contentions made need not be gone into. However, the Court has to consider whether the appellant has made out a prima-facie case or not and thereafter taking into consideration the provisions of the BPMC Act, 1949, appropriate order granting interim relief has to be passed. This Appeal before the lower Court has been filed by the appellant as what its counsel has admitted, under Section 406 of the BPMC Act, 1949. Sub-section (2) of Section 406 of the Act aforesaid provides that no appeal under sub-section (1) shall be entertained unless in the case of appeal against the tax, or in the case of an appeal made against a rateable value, the amount of disputed tax claimed from the appellant or the amount of tax chargeable on the basis of disputed rateable value up to the date of filing the appeal has been deposited by the appellant with the Commissioner. A proviso to this provision lays down that where in any particular case the judge is of opinion that the deposit of amount by the appellant will cause undue hardship to him the judge may, in his discretion, either unconditionally or subject to such condition as he may think fit to impose, dispense with a part of the amount deposited, or required to be deposited, however, that part of the amount so dispensed with shall not exceed 25% of the amount deposited or required to be deposited. From the conjoint reading of these two provisions of Section 406 of the Act aforesaid, we find that for the entertainment of Appeal, the amount of tax has to be deposited by the appellant with the Commissioner. However, the proviso empowers the Court in an appropriate

case where it is of the opinion that deposit of the amount by the appellant may cause undue hardship to him, it may, in its discretion, either unconditionally or subject to such condition as deemed fit may impose, dispense with the part of the amount deposited, or required to be deposited but further, under this provision, dispensing with the deposit of the amount as the condition of entertainment of the appeal shall not exceed 25% of the amount deposited or required to be deposited. Dispensing with the condition of deposit of the amount in an appeal under clause (e) of the tax may only be ordered where the Court is of the opinion that the deposit of the amount by the appellant will cause undue hardship to him. The proviso further lays down that the Court has discretion only to the extent either unconditionally or subject to such condition as it may think fit to impose, dispense with a part of the amount deposited or reuired to be deposited and further that the part of the amount deposit of which is dispensed with shall not exceed 25% of the amount deposited or required to be deposited. So there is no question of total dispensing with the amount deposited or required to be deposited by the appellant for entertainment of appeal under clause (e) of sub-section (2) of Section 406 of the Act aforesaid. The Court could have dispensed with the deposit of the part of the amount which may not exceed 25% of the amount deposited or required to be deposited. Such a provision was held to be intra-vires of the Constitution. The provision which provides for entertainment of appeal in the tax matters only on depositing of the tax demanded is not an invalid piece of legislation. It also cannot be said to be a restricted right of appeal given to the appellant-tax payer. Such a fetter on the right of Appeal can be put and it will not be taken to be a right of the appeal with an onerous condition. It is the discretion of the Court below in appropriate case to dispense with the deposit of the part of the amount which is deposited or required to be deposited by the appellant where it is of the opinion that the deposit of the amount by the appellant will cause undue hardship.

#. In the present case, in the impugned order, I do not find that the Court below recorded its opinion that the deposit of amount of tax challenged in the Appeal by the appellant will cause undue hardship to him. From the reading of this provision we find that sine-qua-non for grant of any relief under proviso to sub-section 2 of Section 406 of the Act aforesaid, only where the court is of opinion on the material brought on record that deposit of the amount of tax which is the subject matter of

challenge in the appeal will cause undue hardship to the appellant. In absence of recording of such opinion, the Court below has no power or competence to grant any interim relief in favour of the appellant. In the order impugned in this Appeal, I do not find that anything has been pointed out to the Court that the deposit of the amount of tax as require to be deposited by him will cause undue hardship to him. So in the order we do not find the Court's opinion that refusal to grant interim relief will result in undue hardship to the appellant and further any material on record thereof to form the opinion that in case of refusal of interim relief undue hardship will be caused to the appellant. The deposit of the amount of disputed tax claimed or the amount of tax chargeable on the basis of the disputed rateable value by the appellant will cause undue hardship to him or not is a pure question of fact. To establish that insistence for deposit of the amount aforesaid will cause undue hardship to him he has to plead and produce necessary factual datas and evidence in support thereof. The mere word of the appellant that the deposit of the amount aforesaid will cause undue hardship is hardly of any substance and on such an averment made, the lower Court would not be justified to grant an indulgence in favour of the appellant. In the case in hand, necessary factual foundation has not been led by the appellant that the deposit of the amount of the demanded tax by him will cause undue hardship to him. In the absence of any factual foundation, the trial Court otherwise could not have passed any order or permitting the entertainment of appeal on deposit of the part of the demanded amount of tax. In this case, despite of total lacking of factual foundation on this vital issue, it is a different matter that the learned Court below has granted indulgence to the appellant, but it is really shocking on the part of the appellant that even after getting more than what otherwise he would not have been entitled, still he has not felt contended and filed this Appeal before this court. This Court also cannot go beyond what the law requires for exercise of powers, more so, discretionary powers of the Court in the matter of grant of interim orders. In this Appeal also, there is a total lack of necessary factual foundation by the appellant on the question that the deposit of the amount of the demanded tax by the appellant will cause undue hardship to him. Otherwise also, indulgence could not have been granted for more than 25% of the disputed amount of tax and if we go by the figures of the demand of tax and the relief granted by way of interim relief by the lower Court nothing more now needs to be ordered in favour of the appellant. Though this order impugned in this appeal has

not been challenged by the Corporation, otherwise I have my own reservation whether this Court would have allowed it to stand or not. Be that as it may, challenge to this order by the appellant does not stand to any merits.

#. In the Appeal also, I do not find anything on the record that the deposit of the amount of tax as provided in Section 406 of the Act by the appellant will cause undue hardship to him. It is an interlocutory order passed by the Court below and ordinarily, the appellate Court, while hearing the Appeal against such an order should be very slow to interfere with the same. The learned counsel for the appellant contended that this order is appealable under proviso (bb) of Section 411 of the BPMC Act, 1949. I do not consider it to be appropriate to go on the question as to whether this order is appealable or not, but it is a fact that the impugned order is only an interlocutory order. Not only that it is an interlocutory order, under proviso to sub-section (2) of Section 406 of the Act aforesaid, whereby discretionary powers have been conferred upon the Small Causes Court to grant interim relief in favour of the appellant in the matter of fixation of Gross Rateable Value of the premises or the assessment of tax subject to further condition only where it is opined that it is a case where the deposited tax or as required to be deposited by the appellant will cause undue hardship to him. Further, this interim relief can only be for part of the amount to be deposited or required to be deposited by the appellant. More so this provision cannot be taken to be more liberal or confirming more and extensive discretionary powers as to what the Civil Courts are having in the matters of grant of temporary injunctions as contained under the provisions of Order XXXIX, Rule 1 and 2 of Civil Procedure Code. An appeal, as provided under section 411 of the Act aforesaid is also not an appeal having wider scope than what the Civil Courts have in exercising its appellate powers under Order XXXXIII, Rule 1 of the Civil Procedure Code. The Appellate Court, while dealing with the appeal against the discretionary order passed by the lower Court, can interfere with the impugned order only where it is satisfied that the order impugned is in any way arbitrary or perverse or capricious or made in disregard of the legal position and without considering all the relevant material on the record. The impugned order does not fall in any of the aforesaid categories.

#. In the appeals where the amount of tax demanded has been challenged, ordinarily the Court should be slow to grant interim relief. In case in the matter of the

appeals arising from the demand of taxes etc. if the Courts lightly grant the stay of recovery of taxes then it will have a wider impact on the public at large. Whatever amount is recovered by the levy of taxes by the Corporation is being utilized for the welfare of the people residing within its limits as well as for the development of the area within its limits. In case such stay orders are lightly granted against the demand of taxes, the Corporation may have difficulty in discharging of its statutory duties which is concerned with the welfare of the people and development and upliftment of schemes incidental thereto. On the other hand, in case the interim relief is not granted in favour of the appellant, he will not suffer any irreparable injury which cannot be compensated in terms of money. At the most, it can be said that he has to part with the money temporarily but if ultimately he succeeds in the Appeal, the Appellate Court certainly has powers to pass appropriate orders for refund of the excess amount as collected from him as tax together with interest thereon at a reasonable rate. In the eventuality of success of appeal whatever amount paid under the impugned order has to be refunded to the appellant by the respondent-Corporation. So it is a case where at this stage, the appellant has to make payment of the amount of tax but it is not the case where he will suffer any injury as on his success in the Appeal he will not be deprived of the fruits of the amount once for all. Whatever loss is suffered by him because of parting with the money at this stage can be compensated by the appellate Court at the time of final disposal of appeal on its success by passing the order of refund of amount together with interest thereon at a reasonable rate. The balance of convenience is also one of the other relevant and material factor to be taken note of while the Court considers the matter of grant of interim relief in an Appeal where the demand of tax has been challenged. As said earlier, the provisions as contained in proviso to sub-section (2) of Section 406 of the Act aforesaid are to certain extent analogous to the powers of Civil Court for grant of injunction as conferred upon them under Order XXXIX, Rule 1 and 2 of Civil Procedure Code, and as such, while dealing with the applications under this provision by the Small Causes Court the same principles which are to be applied for grant of temporary injunction under Order XXXIX, Rule 1 and 2 of Civil Procedure Code, in addition to what are the requirements of the proviso aforesaid have to be considered. In such maters also, leaving apart what is the requirement of proviso to sub-section (2) of Section 406 of the Act, further, the Court has to give consideration to other well defined

factors and ingredients, that is, whether declining of interim relief in favour of the appellant will result in causing irreparable injury to him which cannot be compensated in terms of money and further, the balance of convenience favours grant of interim relief or not. The contention of the learned counsel for the appellant is very clear and specific and in case this contention of the learned counsel for the appellant is accepted and the prayer as made by the appellant in the appeal is granted, then what it will amount to is grant of total stay of the recovery of the amount of tax demanded. That is not otherwise permissible to the Courts under Section 406 of the Act. Be that as it may, in the matter of grant of interim relief, time and again, a note of caution has been given by the Apex Court that it may not over reach the main relief in the main proceedings. Interim relief of the nature as prayed for and to the extent what it is claimed, i.e. beyond what is permissible under Section 406 of the Act is granted then in substance it will amount to grant of principal relief in the Appeal. Grant of interim relief which in substance gives principal relief is deprecated by the Apex Court. What then remains in the proceedings to be decided as it will amount to acceptance of the case to the fullest extent at the interlocutory stage itself.

##. Taking into consideration the totality of the facts of this case, I do not find any substance in this Appeal which calls for interference of this Court in the impugned order. In the result, this Appeal fails and the same is dismissed. As a consequence of the dismissal of this Appeal, no order on the Civil Application. The Civil Application is also dismissed.

(S.K.Keshote, J.)

(sunil)